



Security Council

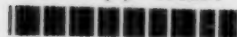
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Note verbale dated 26 October 2004 from the Permanent Mission of Germany to the United Nations addressed to the Chairman of the Committee

Referring to the Chairman's note verbale dated 21 June 2004, the Permanent Mission of Germany has the honour to transmit herewith the report of the Government of the Federal Republic of Germany pursuant to Security Council resolution 1540 (2004) (see annex).





**Annex to the note verbale dated 26 October 2004 from the
Permanent Mission of Germany to the United Nations addressed
to the Chairman of the Committee**

Federal Republic of Germany

**National report on the implementation of Security Council
resolution 1540 (2004)**

October 2004

Operative Paragraph 1

Decides that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery

1. The Federal Republic of Germany does not provide any form of support to non-State-actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery.

Relevant laws and regulations are in place and being implemented. Thus, effective domestic control is established and illicit actions are penalized.

Furthermore, all relevant measures taken and laws implemented are constantly scrutinized with regard to amendments and revisions that current events or developments may make necessary.

2. Any other policy would violate the German Constitution, Article 26 of which prohibits all actions that might disturb the peaceful relations between nations. Article 26 also forbids the manufacture, the transport and marketing of weapons designed for war unless approved by the Federal Government. After the devastating experience of the Third Reich and the Second World War any government of the Federal Republic of Germany is firmly committed to contributing to a more peaceful and safer world.

3. The fight against terrorism along with an effective non-proliferation policy within a multilateral framework features prominently on the foreign and security policy agenda. Germany therefore welcomes Security Council Resolution 1540/2004 on measures to prevent non-State actors acquiring WMD as an important achievement in multilateral efforts in countering proliferation of WMD and shall contribute to its full implementation.

4. The Federal Republic of Germany is party to all relevant multilateral disarmament, arms control and non-proliferation treaties and conventions and remains firmly committed to its obligations within international institutions and conventions, i.e. the United Nations, EU, IAEA, NPT, CWC, BWC etc. The respective conventions have been translated into national law.

Germany shall continue to promote an effective multilateralism as the best way to meet the challenges of the 21st century, in particular the proliferation of weapons of mass destruction. To this end Germany also supports relevant institutions and international cooperative efforts undertaken in the framework of relevant institutional fora, i.a. PSI, G8 Global Partnership, EU.

5. The Federal Government is strongly committed to a restrictive arms exports policy and reaffirmed its stance in the Political Principles Adopted by the Federal Government on the Export of War Weapons and Other Military Equipment adopted in January 2000. At the same time Germany advocates adoption of the EU Code of Conduct for Arms Exports as legally binding guideline. German policy on the export of weapons in general and of related goods is guided by the wish to contribute to maintaining peace, preventing the outbreak of violence, protecting human rights and supporting sustainable development worldwide. With regard to WMD, their export is explicitly forbidden, the export of related goods and other equipment is subject to a very restrictive approval procedure guided by the above mentioned principles.

Operative Paragraph 2

Decides also that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;

6. National law, complemented by enacting obligations derived from relevant international conventions and treaties to which Germany is party, is geared towards effectively preventing proliferation of weapons of mass destruction to non-state actors and to states.

7. The basic regulations on manufacture, transport and marketing of war weapons are contained in the War Weapons Control Act established in 1961 in response to art 26 of the German Constitution (Basic Law), where all actions to develop, transport or market war weapons are prohibited unless explicitly approved by the Federal Government. Transport according to the constitutional article 26 includes not only cross border transport but also domestic transport. Thus, the War Weapons Control Act provides for a comprehensive framework; the Foreign Trade and Payments Act, the War Weapons Reporting Ordinance and the Implementation Act on the Convention on the Prohibition of Chemical Weapons as well as the Implementation Act on the Convention of 10 April 1972 on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons further complement the War Weapons Control Act.

Further laws relevant for the prohibition of development, acquisition, production, possession, the transport, transfer or use of nuclear, chemical or biological weapons and their means of delivery are the Foreign Trade and Payments Ordinance of 18 December 1986, as well as the directly applicable Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology. The Federal Republic of Germany, therefore, has a comprehensive and effective system of laws which fulfils the requirements of state legislation deriving from Res. 1540/04 op 2.

8. Since the middle of the 80s proliferation through export of dual use goods has become particularly problematic as more and more actors tried to get hold of restricted technology. Since it became known in 1989 that a German manufacturer delivered sensitive material for a chemical weapons factory in Libya the German regulations and control procedures including not only the War Weapons Control Act, but i.a. also the Foreign Trade and Payments Act and the Penal Code have been repeatedly amended and rendered more severe.

The details of German regulations are outlined below.

9. Pursuant to Sections 17 and 18 of the War Weapons Control Act all persons, groups and organizations are forbidden to develop, produce or trade in nuclear weapons, parts, devices, assemblies or substances especially designed for them and biological and chemical weapons, to acquire them from or transfer them to another person, to import or export them, to transport them through or otherwise bring them into or out of federal territory, or otherwise exercise actual control

over them. This comprehensive and absolute prohibition covers the possession of, influence on and use of nuclear, chemical and biological weapons.

It is also forbidden to induce another person to commit one of the above-mentioned activities or to encourage one of these activities in any way, particularly through financing.

10. These punitive norms are reinforced by the fact that violations of the law are to be legally classified as crimes and punishable with a prison sentence of up to 15 years. This also applies to attempts to commit one of the above-mentioned acts. Specific penalties for the illicit use of nuclear or radioactive material, the transfer of this material to unauthorized persons or the brokering of such deals, preparation of a radiation offence, initiation of a nuclear explosion, the development, manufacture, purchase, import, export or transit of a nuclear weapon are stipulated in the German Penal Code and may result in fines of up to 250,000 euro, imprisonment for up to five or ten years or even for life.

11. As a party to the Nonproliferation Treaty (NPT) of 1 July 1968 (signed 28 November 1969, ratified 4 June 1974) Germany is committed to the principles and objectives enshrined therein. Germany therefore is bound not to provide source or special fissionable material or equipment or material especially designed or prepared for the processing, use or production of special fissionable material to any non-nuclear weapon state for peaceful purposes, unless the source or special fissionable material is subject to the safeguards required under the NPT. Germany itself is bound not to receive any transfer whatsoever of nuclear weapons or other nuclear explosive devices or of control of such weapons or explosive devices directly or indirectly and not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices and not to seek assistance to this end.

12. Furthermore, as a State Party to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their destruction (CWC) of 13 January 1993, Germany has undertaken never under any circumstances to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention. To enforce this obligation, detailed prohibitions and licensing and declaration requirements for the chemicals specified in the above-mentioned Convention were incorporated into the CWC Implementation Act of 2 August 1994 and the related Implementation Ordinance of 20 November 1996. Under these stipulations the production, processing, acquisition, possession and trade, including the import and export, of such chemicals are subject to strict licensing. A licence is granted only if it can be ensured that performance of the activity requiring a licence will not violate any obligations deriving from the above-mentioned Convention.

13. Furthermore, as a State Party to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction of 10 April 1972, Germany has undertaken not to transfer to any recipient whatsoever the goods covered by this Convention, directly or indirectly, and not in any way to assist, encourage or induce anyone to manufacture or otherwise acquire such weapons.

14. The handling of means of delivery is subject to strict licensing and is prohibited if a licence has not been granted or until a licence has been issued (Section 2 ff, War Weapons Control Act).

Additionally, Section 12 paragraph 1 of the War Weapons Control Act stipulates that all necessary steps must be taken to prevent conventional war weapons (including means of delivery) from going astray or being used by unauthorized persons. It must be ensured that only authorized and extremely reliable persons have access to the war weapons. Violation is punishable with a prison sentence of up to five years, in particularly serious cases up to ten years, pursuant to Section 22a of the War Weapons Control Act. This also applies to accomplices and abettors as well as attempts to commit an offence.

15. Additional regulations to guarantee safety with regard to the manufacture, use, storage and transport of other military equipment and related materials derive from various laws specifically designed to protect the public. In particular the stockpiling, storage, transport, import and export of explosive substances of relevance to the use of means of delivery are subject to many licensing and reporting requirements, which derive from the Explosives Act. These monitoring activities chiefly involve assessing and checking technical security aspects to prevent unauthorized persons gaining access to such substances and thus to protect the public.

In addition, other requirements designed to guarantee transport security derive from the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR) and the national regulations on the transport of dangerous goods by road, rail, sea and inland waterways.

Operative Paragraph 3

Decides also that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:

(a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;

16. As listed above, the production, use, storage and transport of nuclear, chemical and biological weapons and related technologies is prohibited and a criminal offence. Accounts of legal transactions can therefore not be kept.

17. The handling of radioactive substances (nuclear fuels and other radioactive substances), chemicals and biological agents for exclusively peaceful purposes is subject to strict national monitoring according to the laws mentioned in op 2. In addition to these regulations further and specific rules apply for the use of nuclear material which are implemented and controlled by EURATOM. The EU-Council Directive 2003/122/EURATOM of 22 December 2003, which is binding for EU Member States, and the national Radiation Protection Ordinance regulate the handling of nuclear material. To implement the recommendations of the IAEA Code of Conduct on the Safety and Security of Radioactive Sources Germany is currently amending the Atomic Energy Act in order to provide for the creation of a national electronic register for high-activity sealed radioactive sources.

18. In addition to requirements of official approval described in paras 23-27, the Radiation Protection Ordinance requires anyone authorized to handle or use radioactive substances - i.e. nuclear material and other radioactive material - for peaceful purposes to notify the responsible supervisory authority

of any extraction, production, acquisition, transfer or other whereabouts of the respective radioactive substances within one month of the beginning by specifying the activity and type of the material. They must also keep detailed records of these actions and submit the inventory of radioactive substances to the responsible authority once a year. The authority conducts inspections to verify the accuracy of the records and declarations.

Radioactive waste may only be disposed of in Federal repositories or State waste-collecting facilities, which are adequately secured in accordance with regulations.

All radioactive waste must be registered electronically and transparently and the records regularly updated by the bodies authorized to use radioactive substances, as specified in an Annex to the Radiation Protection Ordinance. This data is included in the advance notification prior to any shipment of radioactive waste.

19. With regard to monitoring the handling of chemicals, the CWC Implementation Act and the related CWC Implementation Ordinance stipulate that all handling of the chemicals covered by the Convention is subject to comprehensive and strict licensing, declaration and reporting. Furthermore, anyone who is subject to these restrictions or required to report shall take all necessary steps to prevent the chemicals going astray or being used by unauthorized persons. The federal supervisory authorities may demand company assessments and inspections to check compliance with these obligations. Violation of these regulations is punishable with a prison sentence of up to five years.

20. Various legal provisions are in place in Germany to monitor the handling of hazardous biological agents, depending on the type of pathogen, such as the Animal Disease Act, the Plant Protection Act, the Protection against Infection Act and the Biological Agents Ordinance. They contain detailed reporting, controlling and licensing requirements. These special laws make it possible to track the whereabouts of biological agents even when they are used exclusively for civilian purposes.

21. With regard to the handling of means of delivery, pursuant to Section 12 paragraph 2 of the War Weapons Control Act and the Second Implementation Ordinance to the War Weapons Control Act a register of war weapons must be maintained to keep detailed and complete track of their whereabouts. Pursuant to Sections 9 and 10 of the Implementation Ordinance, the original stock levels, any changes and the stock levels on the reporting dates (31 March and 30 September each year) must be immediately entered in the war weapons register. In addition, the names and addresses of the manufacturer, the transporter and the purchaser of each weapon must be supplied. Improper keeping of the war weapons register shall be punishable with a fine of up to 5000 euro. Moreover, the War Weapons Reporting Ordinance of 24 January 1995 contains additional reporting requirements for the import and export of certain missiles. Pursuant to this ordinance the number of missiles, the war weapon serial number, the type, the date of import or export, the purpose and the country of destination for the import and export of such missiles are to be reported.

Operative Paragraph 3

(b) Develop and maintain appropriate effective physical protection measures;

22. With a view to securing nuclear facilities and nuclear materials against illicit use and sabotage Germany has put strict regulations in place that translate the principles of the Convention on the Physical Protection of Nuclear Material into national law as specified below.

23. According to the German Atomic Energy Act import and export, transport, possession, treatment, processing, other use, storage and disposal of nuclear material is subject to licensing and regulatory supervision by competent national authorities. These activities shall only be authorized if the licensee and State response forces can ensure the necessary physical protection against third party interventions, in addition to other licensing conditions. Additional physical protection measures for trans-boundary shipments of nuclear material as prescribed by the Convention on the Physical Protection of Nuclear Material have been implemented.

24. The respective physical protection measures are structural, technical, personnel-based and administrative. They observe the principles of graded approach and defence-in-depth and take the national design basis threat into account, as required by the Fundamental Principles and Objectives of Physical Protection endorsed by the IAEO General Conference in September 2001. The protection measures have been specified in a set of classified national guidelines and are complemented by the Ordinance on the Verification of Trustworthiness for Protecting Against the Diversion or Major Release of Radioactive Material and the General Administrative Provision on the Protection of Classified Information. The system of protective measures by the licensee as specified in laws, ordinances and authority guidelines plus protective measures by State response forces ensure that nuclear material is effectively protected against theft or any other unauthorized removal from its peaceful use and against transfer to illegal applications in nuclear or radiological weapons.

25. This licensing and physical protection regime is also regarded as a contribution to the implementation of the position of the EU in Article 4, last bullet of the Council Common Position 2003/805/CFSP of 17 November 2003 to promote measures which effectively exclude any possible misuse of civilian nuclear programmes for military purposes. Germany furthermore supports current efforts to amend the Convention of Physical Protection of Nuclear Material and Facilities.

26. For other radioactive substances, which might be used as materials for radiological weapons – in particular radioactive waste and high-level sealed sources –, the German Radiation Protection Ordinance and the EU-Council Directive 2003/122/EURATOM provide the legal basis for demanding and implementing physical protection measures against theft or other unauthorized removal from peaceful applications. Furthermore, Germany fully supports and is implementing the IAEA Code of Conduct on the Safety and Security of Radioactive Sources.

27. If licensees fail to meet their obligations under the licence based on the legal prescriptions mentioned above, the national legal instruments specify sanctions such as temporary revocation, complete withdrawal of the respective licence or fines of up to 50,000 euro.

28. Pursuant to the Protection Against Infection Act, the Genetic Engineering Act, the Animal Infectious Disease Act and respective ordinances the possession and handling of hazardous biological agents requires special authorization by the respective medical, veterinary or other agencies. The authorizations are granted for specified agents or specified purposes only. Furthermore, authorization is only granted in case of proven professional need, competence and reliability of authorized persons. Finally, the equipment must meet security requirements that comply with national and international standards. Domestic transfer of hazardous biological agents for legal peaceful purposes may take place only among authorized persons and facilities. Any handling of agents must be documented in detail. In case the licensee fails to meet his obligations national legislation specifies sanctions like temporary revocation or complete withdrawal of the respective authorization and/or administrative fines.

29. With regard to chemical weapons the German CWC Implementation Ordinance stipulates that any handling of the chemicals covered by the Convention is subject to comprehensive and strict licensing, declaration and reporting. Furthermore, anyone who is subject to these restrictions or reporting requirements shall take all necessary steps to prevent the chemicals going astray or being used by unauthorized persons. The federal supervisory authorities may demand company audits and inspections to check compliance with these obligations. Violation of these regulations is punishable with a prison sentence of up to five years.

30. Strict national security and safety regulations apply to the handling of World War I and II ammunition with chemical fill. This ammunition, once recovered from the ground, is treated according to the provisions of the Law on Explosives in conjunction with the 1st and the 2nd Ordinance Pertaining to the Law on Explosives as well as with the pertinent regulations on the storage of explosives and the rules and regulations issued by the chemical industry employer's liability insurance association.

The handling of the chemical fill is based on the provisions of the Hazardous Substances Ordinance.

Operative Paragraph 3

(c) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;

31. In the Federal Republic of Germany any form of trade including cross-border trade in nuclear, biological or chemical weapons of mass destruction is prohibited pursuant to Section 17 ff of the War Weapons Control Act. The prohibition also applies to the conclusion or brokerage of contracts which involve the acquisition or transfer of weapons of mass destruction and to all activities leading up to the conclusion of such a contract. The specific regulations are outlined below.

32. The acquisition and transfer of means of delivery is governed by the strict licensing regulations applicable to war weapons and is prohibited unless a licence has been granted or until a licence has been issued see op 2, para 14). Brokering such contracts or showing that an opportunity exists to

conclude such contracts concerning war weapons located outside Germany also requires a licence (Section 4a, War Weapons Control Act).

33. Control of cross-border trade in related materials in Germany takes place in accordance with international agreements on the basis of European legislation. Pursuant to Art. 3 and 4 of Council Regulation (EC) No 1334/2000 of 22 June 2000, a licence is required for the export of the dual-use items listed in Annex I of the EC Regulation; and other related materials must be controlled if they are or could be intended for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of nuclear, biological or chemical weapons or for the development, production, maintenance or storage of missiles capable of delivering such weapons.

A national licensing requirement also exists pursuant to Sections 5c and 5d of the Foreign Trade and Payments Ordinance, in cases where other related materials are or could be intended for military use or for the construction of, operation of or incorporation into a nuclear processing plant, and the purchasing country or destination is listed in Sections 5c and 5d of the Foreign Trade and Payments Ordinance.

34. If the military equipment is located outside Germany or outside the territory of the European Union, licensing is required pursuant to Section 40 paragraph 1 of the Foreign Trade and Payments Ordinance if a German acquires the equipment abroad from a non-German and resells it to a third party, unless the purchasing country and destination is an EU member state or listed in Annex II part 3 of Council Regulation (EC) No 1334/2000. Likewise, transit trade with dual-use items is subject to licensing pursuant to Section 40 paragraph 2 of the Foreign Trade and Payments Ordinance if the items are located outside the European Union and the purchasing country and destination is an embargo country or included on the Foreign Trade and Payments Ordinance Export List.

35. Furthermore, in addition to the above-mentioned equipment controls, Section 45 ff of the Foreign Trade and Payments Ordinance grant the authorization to control technological support services rendered inside and outside the Federal Republic of Germany. In Germany, therefore, both the transfer of equipment and the transfer of know-how require a licence.

36. These controls demand licences for all support services of relevance to the development, production, handling, operation, maintenance, storage, detection, identification and dissemination of chemical and biological weapons, nuclear weapons or other nuclear explosive devices. Support services rendered in connection with the development, production, maintenance or storage of missiles capable of delivering such weapons likewise require a licence.

Violation is punishable with a fine of up to 500,000 euro. In particularly serious cases a prison sentence of up to five years may be imposed.

37. The Federal Ministry of Economics and Labour in agreement with the Federal Foreign Office and the Federal Ministry of Finance is also entitled to prohibit legal transactions and activities concerning external economic affairs in individual cases, especially exports and transfers, if they could significantly disturb the peaceful coexistence between nations or seriously disrupt the Federal Republic of Germany's security or external relations (Section 2 paragraph 2, Foreign Trade and

Payments Act). This power of intervention, which was introduced partly to prevent the proliferation of weapons of mass destruction, can be used even if the legal transaction or the activity concerned does not require a licence pursuant to the EC Dual-Use Regulation or the Foreign Trade and Payments Ordinance. It enables the Federal Government to take effective measures very quickly to counter an acute proliferation risk.

38. On 23 June 2003 the Council of the European Union adopted a Common Position on the control of arms brokering (2003/468/CFSP), the content of which is in line with the above-mentioned regulation in Section 4a of the War Weapons Control Act. The introduction of appropriate controls to enforce the contents of the Common Position is currently under way.

Operative Paragraph 3

(d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations

39. With its extensive prohibitions on handling weapons of mass destruction, including related support services and the prescribed penalties for violation of the law, Germany complies with the requirements of op 3 d concerning nuclear, biological and chemical weapons.

40. Germany is a founding member of all export control regimes in the field of non-conventional weapons: the Nuclear Suppliers Group, the Missiles Technology Control Regime and the Australia Group. The Federal Government considers them to be a relevant contribution of major importance to achieving the goal of preventing the proliferation of WMD as enshrined in the international non-proliferation conventions and treaties (NPT, BTWC, CWC). With a view to contributing to the further development of the scope of all export control regimes, Germany has explicitly supported the inclusion of a catch-all clause (approval requirements for non-listed items in case of possible misuse relevant to proliferation of WMD) and of an additional regime objective, i.e. preventing access of persons suspected of supporting terrorism to listed items.

The adoption of the export control lists and the control regulations of the respective export control regimes by states outside the regimes features among the political goals of the Federal Government. Germany maintains that this is an important contribution to global efforts in the fight against proliferation that reaches beyond the state parties of the export control regimes.

Germany faithfully implements the guidelines of the export control regimes and has to this end adopted, as necessary, the required national regulations as outlined below.

41. Export, transit, trans-shipment and re-export of means of delivery are subject to strict licensing regulations pursuant to Section 2 ff of the War Weapons Control Act in accordance with the provisions on conventional war weapons. Such activities are prohibited unless a licence has been granted or issued and are punishable with a prison sentence of up to five years, in particularly serious

cases up to ten years. This also applies to supporting financial and transport services if they are deemed to contribute to the unauthorized export, re-export or transit, as well as to attempts to do so.

42. Export controls for related materials, if they are dual-use items, take place on the basis of Council Regulation (EC) No 1334/2000 of 22 June 2000. The Federal Office of Economics and Export Control (BAFA) subjects such export applications to a thorough technical examination. Decisions on exports to specific countries or recipients with potential proliferation risks are taken by an interministerial export committee representing various ministries and competent authorities. Licences are generally granted only if the end-use of the items for civilian purposes has been presented convincingly and plausibly and there are no indications that the items will be put to sensitive use. Licensing practice is largely shaped by the Federal Government's decision not to contribute to the proliferation of weapons of mass destruction and the missiles and systems that deliver them.

43. Moreover, the export of unlisted dual-use items, i.e. items which the international export control regimes have not deemed generally worth controlling, may also require a licence. The export of such goods requires a licence if they are or could be intended for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of nuclear, biological or chemical weapons or for the development, production, maintenance or storage of missiles capable of delivering such weapons. In addition, pursuant to the supplementary national stipulations, a licence must also be obtained if these goods are or could be intended for a military end-use or for the construction of, operation of or incorporation into a nuclear processing plant and the purchasing country or destination is listed in Sections 5c and 5d of the Foreign Trade and Payments Ordinance. For applications of this nature a licence is granted only - in line with the licence procedure for dual-use goods - if comprehensive examination of the use of the goods and the final recipient reveals no potential proliferation risks. This corresponds to the licensing procedure for dual-use items.

44. Another central condition determining whether a licence is granted is the reliability of the exporter, which is checked regularly. Every application for an export licence is carefully compared with the lists of names in the various anti-terrorism regulations to prevent weapons of mass destruction, their means of delivery or related materials from falling into the hands of persons suspected of supporting terrorism. The checks cover not only the exporter's name, but also everyone connected with the planned export.

45. Exporting items without prior authorization is prohibited and punishable with a prison sentence of up to five years, in particularly serious cases up to 15 years. Supporting financial and transport services are also punishable if they can be regarded as contributing to the unauthorized export or re-export, as are attempts to commit such offences.

These rigorous individual examinations and the high penalties for violating the law guarantee an optimal level of security and have proved appropriate and effective in preventing export law evasion and in controlling the access of non-State actors to weapons of mass destruction, means of delivery and related materials.

46. Irrespective of the above-mentioned licensing procedure, the export, transit and trans-shipment of goods in Germany may also be prohibited and prevented by intervention in individual cases, as

described in more detail in op 3c, pursuant to Section 2 paragraph 2 of the Foreign Trade and Payments Act. In this context it is important to mention that this power of intervention also exists if the activity concerned does not require a licence. The Federal Government has made use of this option on various occasions.

47. The regulations on combating money laundering and terrorist financing applicable in Germany, which specifically aim to ensure the transparency of payments, also serve to control and prevent the funding of proliferation deals. In Germany a complex set of rules on combating money laundering based on two EU guidelines has been in place since 1993. Following the events of September 11, 2001, the member states of the Financial Action Task Force on Money Laundering (FATF), which include Germany, also pledged to translate the eight FATF Special Recommendations on Terrorist Financing into national law by June 2002. With the fourth Financial Market Promotion Act, which entered into force on 1 July 2002, and the Money Laundering Prevention Act of 8 August 2002, Germany has taken further legal steps to implement the FATF recommendations to combat money laundering and terrorist financing.

The following measures deserve specific mention:

48. Section 25a paragraph 1 (4) of the Banking Act obliges credit institutes to establish all-inclusive computer monitoring systems to examine transactions according to risk groups and suspicious features and create appropriate security systems to screen clients and transactions. Implementation of the international customer due diligence standards requires active investigation of business relations and risk groups which have provided grounds for suspicion. Moreover, credit institutes, insurance companies and financial service providers have to set up appropriate security systems and controls for clients and transactions to prevent money laundering and terrorist financing pursuant to Section 14 paragraph 2 of the Money Laundering Act. The Federal Financial Supervisory Authority constantly updates this general clause with administrative provisions.

49. Pursuant to Section 25b of the Banking Act, when transferring funds via cash-free transactions with states outside the European Union, credit institutes must ensure that client data is fully recorded and passed on and that incomplete data can be identified and completed where necessary.

50. Pursuant to Section 11 of the Money Laundering Act credit institutes must immediately report to the responsible law enforcement agencies any facts which give rise to the suspicion that a financial transaction could involve a criminal money laundering activity or the financing of a terrorist organization. The financial market supervisory authorities and the finance offices have the same obligation pursuant to Sections 13 and 16 of the Money Laundering Act and Section 31b of the Fiscal Code respectively.

51. Section 5 of the Money Laundering Act provides for the establishment of a Financial Intelligence Unit – FIU in the Federal Criminal Police Office to pool, examine and evaluate all financial intelligence information and exchange data with central offices in other countries. Thus the instrument of financial intelligence on money laundering is to be used more to detect financial flows than serve terrorism.

52. According to Section 12a paragraph 1 of the German Customs Administration Act persons shall report upon request of the relevant officials (Customs and Federal Border Control Police) the nature, number and value of cash or equivalent means of payment to the value of 15,000 euro or more which they are taking or transporting into, out of or through the country. If there is reason to assume that cash or equivalent means of payment are being transported for the purpose of money laundering or terrorist financing, the respective officials may seize the cash or the equivalent means of payment up to one month. The relevant criminal authorities are to be informed without delay (Section 12a paragraph 2). According to Section 12a paragraph 3, the competent customs authorities may record, process and utilize personal data. The customs authorities may forward this data to the responsible criminal prosecution authorities as well as to other financial authorities under certain conditions.

Operative Paragraph 6

Recognizes the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists.

53. The existence of national lists of items to identify the range of controllable items is a central aspect of German export control. These control lists contain all items classified as worthy of control in the international export control regimes, the competent European Union bodies and the Federal Government.

These lists are subject to ongoing checks and updates. Specifically, the decisions taken under the international export control regimes and in the EU on changing the lists are to be translated into national law as soon as possible. This ensures that all items which have been classified as worthy of control at international level are also subject to checks in Germany.

Operative Paragraph 7

Recognizes that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions

54. The German government attaches great importance to assisting partner countries where necessary and requested in fulfilling their international obligations in the field of dismantlement, export control and non-proliferation of WMD.

55. Germany has pledged up to 1.5 billion US dollars up to 2012 for projects within the Global Partnership against the Spread of Weapons and Materials of Mass Destruction launched at the G-8 Summit 2002 in Kananaskis. Currently Germany is supporting three projects in the Russian Federation:

- The construction of a CW destruction facility at Kambarka (appr. 300 million euro up to 2008). The project Kambarka is the 'successor' of the only working Russian CW-destruction facility at Gorny, which has been erected with German help and is still receiving German support.

- The construction of a long-term intermediate storage facility for 300 reactor compartments of decommissioned Russian submarines at Saida-Bay including the dismantling of the decommissioned submarines there (appr. 300 million euro up to 2008)
- The modernization of the physical protection of almost 20 nuclear installations and storage sites (including for nuclear weapons destined for disarmament, appr. 170 million euro up to 2009)

56. As a member of the "Northern Dimension Environmental Partnership" Germany supports its nuclear window with 10 million euro up to 2007.

57. Germany has been actively supporting the IAEA Nuclear Security Fund, which helps to implement programmes to improve the physical protection of nuclear materials and radioactive sources, through in-kind contributions (experts in physical protection) plus financial contributions of 1.2 million euro since 2002. In addition, Germany has been advising and supporting nations in designing and improving their national systems for physical protection on a bilateral basis, through direct technical assistance, expert services and training courses conducted in the Russian Federation and the Ukraine. This support will continue as far as the financial resources will allow.

58. The Federal Government supports bilaterally through its implementing agencies (Federal Office of Economics and Export Control (BAFA), Customs Authority) the establishment and further development of national export control system in several European and non-European states. This support shall be maintained and partly expanded.

59. Furthermore, Germany has extended assistance in the field of national implementation of the CWC obligations to several countries.

60. Finally, on the occasion of the meeting of state parties to the BTWC Germany also offered to several countries to assist in implementing prohibition and export control obligations pursuant to BTWC.

Operative Paragraph 8

Calls upon all States:

(a) To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons;

61. Germany is party to all relevant international treaties and conventions. It promotes bilaterally as well as within the EU framework the universalisation and the full implementation of multilateral control regimes in the field of non-proliferation of WMD, related material and their means of delivery. This policy has been confirmed within the EU-framework by the adoption of the Common Position of the European Council on the Universalisation and Reinforcement of Multilateral Agreements in the field of WMD and Means of Delivery in November 2003 as well as by the adoption in December 2003 of the EU Strategy against the Proliferation of WMD.

62. The multilateral treaty regime provides the normative basis for all non-proliferation efforts. Germany is committed to working towards strengthening the disarmament and non-proliferation treaties, agreements and arrangements, with a view to filling identified gaps in the current pattern of multilateral instruments. Particular emphasis is put on reinforcing compliance with their provisions, i.a. by enhancing the detectability of significant violations and strengthening enforcement of the norms established by the multilateral treaty regime.

63. Germany is committed to working towards effectively strengthening the role of the UN Security Council, as the final arbiter on the consequence of non-compliance – as foreseen in multilateral regimes – , to promote compliance with the non-proliferation commitments of the NPT by universalising the Additional Protocol and making it the verification standard for all NPT State Parties and fostering additional measures to ensure that any possible misuse of civilian programmes for military purposes will be effectively excluded. The promotion and implementation of the nuclear disarmament obligations of the Nuclear Weapon States in line with Article VI of the NPT and the practical steps contained in the Final Document of the 2000 NPT Review Conference contribute to this objective. Compliance with the nuclear disarmament obligations is crucial for maintaining the effectiveness, authority and integrity of the nuclear non-proliferation regime.

64. To this end Germany has made specific proposals during the ongoing review process of the Non-Proliferation Treaty (NPT/CONF.2005/PC.IIIWP.14 on Export Controls, NPT/CONF.2005/PC.IIIWP.15 on procedures and mechanisms to strengthening the NPT against withdrawal and non-compliance, NPT/CONF.2005/PC.IIIWP.16 on compliance, NPT/CONF.2005/PC.I/13 on implementation of article VI and paragraph 4(c) of the 1995 Decision on "Principles and Objectives for Nuclear Non-Proliferation and Disarmament, NPT/CONF.2005/PC.I/WP.12 on protection against nuclear terrorism and security of nuclear materials and nuclear installations, NPT/CONF.2005/PC.I/WP.5 on non-strategic nuclear weapons, NPT/CONF.2005/PC.I/WP.4 on attaining a nuclear-weapon-free world).

65. Germany continues to work on the strengthening and completion of the international treaty regimes and inspection mechanisms which can contribute to curbing and preventing the proliferation of ballistic missiles. In the context of the Hague Code of Conduct Germany has contributed to this end substantial proposals for an effective implementation of the Code (Working paper of 2 October 2003 and 17 June 2004 on the occasion of the HCOC Annual Conferences and Experts Meetings). Germany is promoting these goals in bilateral consultations with third countries and works for a universal participation to the Hague Code of Conduct.

66. In the absence of a verification protocol, Germany proposed at the BTWC Meeting of Experts in July 2004 in Geneva to revisit UN Resolution 42/37 C (Measures to Uphold the Authority of the 1925 Geneva Protocol) and UNGA Document A/44/561 (Chemical and Bacteriological (Biological) Weapons) with a view to supporting the UNSG in improving his capabilities to carry out investigations in response to reports that may be brought to his attention by Member States concerning the use of biological weapons.

67. As State Party to the Chemical Weapons Convention Germany has been actively pursuing a policy aimed at strengthening this important disarmament instrument in both the Executive Council and the Conference of the States Parties of the OPCW. Germany's regular contribution of nearly 10% to the OPCW programme and budget reflects its commitment to the object and purpose of the Convention. Germany has actively contributed to both the OPCW Action Plan on Universality by participating in demarches aimed at the universalisation of the CWC. In the context of the OPCW Action Plan on National Implementation, Germany has extended assistance to several other States parties with a view to enabling the speedy completion of their national implementation legislation.

Operative Paragraph 8

(b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral non-proliferation treaties;

68. As mentioned in op 2 and 3 Germany has translated all obligations and commitments of the relevant international and multilateral treaties and conventions Germany has acceded to into national law. Germany is committed to continue to do so as the necessity occurs.

Operative Paragraph 8

(c) To renew and fulfil their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;

69. Germany is a longstanding and active supporter of the International Atomic Energy Organisation and its work. As the third largest contributor to the IAEA Budget, Germany spends every year more than 27 million US-dollars in support of the Agency's regular budget with an additional amount of 4.5 million US-dollars in support of the technical cooperation activities of the Organisation. Germany was among the first to sign and ratify the changes in the IAEA statute to allow for biennial budgeting. A bilateral safeguards support programme and a number of cost-free experts provided to the Agency add to those amounts. Furthermore, Germany –through the active participation of numerous experts in IAEA working groups is substantially engaged in the work of the Agency, in particular with regard to its non-proliferation activities and the IAEA measures against the threat of nuclear terrorism.

70. Germany has been supporting the BTWC in all its aspects and has been working actively towards strengthening the Convention with EU and other partners. This includes annual demarches towards universality of the BTWC.

Following the failure in 2001 to achieve a legally binding instrument to verify compliance with the Convention, States Parties took a pragmatic decision at the 5th Review Conference to launch a new process scheduled until 2005 with a view to contributing valuable expertise on a full range of topics including national legal implementation of the BTWC prohibitions and export regulations including penal legislation, implementation of national measures to improve the safety/security of dangerous biological agents, national and international efforts to improve biosurveillance of disease outbreaks

and, finally, enhancing international capabilities for responding to and investigating cases of alleged use of biological weapons or suspicious outbreaks of disease. Germany is one of the main supporters of this process. Furthermore, in the absence of a verification protocol, Germany has been contributing since 1987 to the confidence building measures (CBMs) by annually reporting all relevant scientific projects, publications and institutions as agreed at the 2nd and 3rd BTWC Review Conferences.

71. Germany has been a staunch supporter of chemical disarmament and of the OPCW since its inception. It is noteworthy that the final text of the CWC was agreed on at the CD in Geneva in 1992 under German chairmanship of the ad hoc group. Germany has maintained for some time that, apart from the destruction of CW, the universalisation and full national implementation of the CWC is one of the essential elements for its efficiency. A comprehensive national implementation legislation was already adopted in 1994, 3 years before the entry into force of the CWC, in April 1997. Germany has actively participated in various demarches of the EU to promote universality. Furthermore, Germany has extended assistance to several countries in the field of national implementation of CWC obligations. As a member of the Executive Council of the OPCW, since its entry into force, Germany has been actively involved in promoting the object and purpose of the CWC. Germany attaches particular importance to the further development of the challenge inspection regime with a view to making it a routinely usable instrument within the treaty.

Operative Paragraph 8

(d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;

72. The publication of wide-ranging information on obligations pursuant to existing multilateral treaties and other agreements as well as under national law is a standard practice and a key element of German export control efforts. The effectiveness of our efforts in this field requires the provision of detailed instruction and the close involvement of the economic sectors affected.

73. To this end the Federal Ministries and the BAFA have published a large number of pamphlets and information sheets which can be read and downloaded free of charge from the respective websites (e.g. www.ausfuhrkontrolle.info). This information ranges from presentations of all relevant legal texts to explanations of administrative practice. Regular information days and expert discussions, providing the economic sectors concerned with updated information on current export control developments, supplement the publications.

Furthermore, Germany is heavily involved in organizing information days at international level, especially as part of the outreach activities of the international export control regime, to promote the harmonization and strengthening of efforts to prevent the proliferation of weapons of mass destruction through international cooperation.

Operative Paragraph 9

Calls upon all States to promote dialogue and cooperation on non-proliferation so as to address the threat posed by proliferation of nuclear, chemical, or biological weapons, and their means of delivery

74. In its Strategy against the Proliferation of Weapons of Mass Destruction the EU lists a number of policy areas and instruments relevant to the non-proliferation of WMD. Among these measures the promotion of a stable international and regional environment figures prominently. The best solution to the problem of proliferation of WMD is that countries should no longer feel they need them.

To this end Germany is fully committed to the objectives of the EU Strategy against the proliferation of WMD, which provides for an intensified political dialogue on disarmament, arms control and non-proliferation with third countries. Germany fosters regional and trans-regional dialogue in order to create a safer environment. Our policy is to prevent, deter, halt and, where possible, eliminate proliferation programmes of concern, while dealing with their underlying causes.

We further work to strengthen export control policies and practices in coordination with partners of the export control regimes and advocate, where applicable, adherence to effective export control criteria by countries outside the existing regimes and arrangements. Germany also continues to strengthen supplier regimes and European coordination in this area.

The EU also pursues a complementary approach geared towards mainstreaming non-proliferation policies into the EU's relations with third countries in introducing a non-proliferation-clause in future agreements of the EU with third countries. The EU economic co-operation or development assistance with third countries will take account of WMD proliferation concerns.

Germany fosters, contributes and adds to these actions by the EU in its bilateral dialogue with third countries, promoting regional security arrangements and regional arms control and disarmament processes.

75. Germany as a member of G8 is fully committed to the work and the initiatives of the G8 in the field of non-proliferation. Germany has pledged up to 1.5 billion US dollars up to 2012 for projects within the "Global Partnership against the Spread of Weapons and Materials of Mass Destruction" launched at the G-8 Summit 2002 in Kananaskis (see para 54). Together with G8 partners Germany is promoting the G8 principles to prevent the spread of WMD and materials of mass destruction to terrorists and those that harbour them adopted at the G8 Summit in Kananaskis 2002 and the action plan on radioactive sources adopted at the G8 Summit in Evian 2003. Together with G8 partners Germany is working on the implementation of the G8 action plan on non-proliferation adopted by G8 at Sea Island in 2004 which foresees a whole range of further concrete measures to fight the proliferation of WMD.

76. Germany also participates in NATO's fora on non-proliferation. First and foremost, the Senior Group on Proliferation Issues (SGP) engages in analysis of proliferation of WMD and its means of delivery aimed at formulating conclusions and recommendations for the Alliance's policy. In addition, as an instrument of outreach policy the SGP regularly consults with member countries of the Mediterranean Dialogue or Ukraine on non-proliferation issues.

The promotion of dialogue and cooperation on non-proliferation is also taking place within the NATO-Russia Council (NRC) "at 27". Joint analysis of non-proliferation instruments and current non-

proliferation challenges is geared towards elaborating common policy approaches for NATO and Russia to address the threat posed by proliferation of WMD and their means of delivery. The same applies to the Euro Atlantic Partnership Council (EAPC). The EAPC is another appropriate forum to address proliferation issues in order to bring about an international strategic consensus against the proliferation of WMD and their means of delivery.

Operative Paragraph 10

Further to counter that threat, calls upon all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials;

77. As mentioned in op 9 Germany is cooperating bilaterally as well as multilaterally with all state partners and with the relevant international institutions and fora.

78. Germany has from its inception been actively involved in the Proliferation Security Initiative (PSI). In the Statement of Interdiction Principles adopted on 4 September 2003 in Paris, the participating states reaffirmed their commitment to impede and stop shipment of WMD, delivery systems, and related materials flowing to and from states and non-state actors of proliferation concern, consistent with national legal authorities and relevant international law and frameworks, including the United Nations Security Council.

In May 2004 Germany and its partners in the European Union have further pledged to fully endorse and subscribe to the Statement on Interdiction Principles of 4 September 2003. They noted in this context that UN Security Council resolution 1540 (2004) calls upon all states, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials. Such a preventative operation was undertaken by German law enforcement agencies in cooperation with partners in October 2003. The German vessel BBC China, flying the flag of Antigua was rerouted to an Italian port and subsequently searched. The search revealed components for a centrifuge in five containers.

On 31 March/1 April 2004, Germany organised the first PSI interdiction exercise exclusively designed for law enforcement at Frankfurt International Airport under the auspices of the German Customs. Eighty-six representatives from 29 countries and the EU Commission and the EU Council Secretariat participated in the exercise either actively or as observers. The goal of the interdiction exercise was to improve procedures for the prevention of the proliferation of weapons of mass destruction, related materials and technologies and their means of delivery.

79. Furthermore, as Germany is a member of the EU, reference is made to the EU Common Report that will be transmitted to the UNSC 1540 Special Committee separately. This EU Report covers areas of EU and Community competences and activities in relation to UNSC Resolution 1540 and should be read in conjunction with this national report.